

Washington testified that she did not respond to the first Commission letter because the letter was addressed to Pine Tree. She sent subsequent Commission letters to her husband Eugene, but never followed up to ascertain whether a response to the Commission's inquiries were fully and timely made. She did not bother to respond to the Commission's fourth letter because, she claims, she had no further information to provide. Janet Washington's failure to respond to official Commission inquiries demonstrates that Praise Media cannot be relied upon to carry out the fundamental responsibilities of a licensee. This failure, standing alone, renders Praise Media unqualified to hold the KARW(AM) license. Accordingly, the Presiding Judge should rule against Praise Media on this issue.

D. Technical Issue

9. Praise Media has met this issue, except that it has failed to provide the Environmental Assessment required by Section 1.1307(b) of the Commission's Rules. Any action granting the renewal application at issue in this proceeding should be conditioned on Praise Media submitting, and the Mass Media Bureau approving, the required Environmental Assessment.

E. Resumption of Operations Issue

10. Based on the record in this proceeding, it cannot be concluded that Praise Media is capable of expeditiously returning KARW(AM) to the air. Station KARW(AM) has been

off the air since the Autumn of 1994, in part, because Praise Media could not afford to pay the station's electric bill. Although Janet Washington claimed at various points in her testimony that she has money in escrow or loans in place for the purpose of putting KARW(AM) back in operation, the documentary evidence offered in support of these claims demonstrates only that she had *applied* for a loan. Because Praise Media is relying on loans or other money in escrow accounts to put KARW(AM) back on the air, and has failed to show that such loans or escrow accounts actually exist, it must be concluded that Praise Media is incapable of expeditiously returning KARW(AM) to the air because it lacks the financial wherewithal to do so. Accordingly, the Presiding Judge should find against Praise Media on this issue.

#### F. Silent Station Rules Issue

11. Section 73.1740(a)(4) of the Commission's Rules provides that:

In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, D.C. not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30 day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary.

Section 73.1750 provides:

The licensee of each station shall notify the FCC in Washington, DC of permanent discontinuation of operation at least two days before operation is discontinued. Immediately after discontinuance of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, DC for cancellation.

12. In the instant case, the Commission was never notified that KARW(AM) had gone off the air on September 13, 1994. Janet Washington drafted a letter informing the Commission that "due to vandalism and theft of equipment," KARW(AM) was off the air. She sent this letter, which was addressed to the Commission, to Praise Media's communications counsel in the expectation that he would file it with the Commission. The letter, however, was never filed with the Commission.<sup>4</sup> It also appears that Janet Washington attempted to contact the Commission by telephone to inform the agency that KARW(AM) was off the air.

13. Although Janet Washington appears to have taken reasonable steps in an attempt to initially inform the Commission that KARW(AM) had gone dark, those efforts proved unsuccessful. Even assuming, arguendo, that Praise Media had initially informed the Commission that KARW(AM) was off the air, at no time did Praise Media request authority from the Commission for KARW(AM) to remain silent beyond 30 days. Accordingly, it must be concluded that Praise Media violated the rule sections in question, and the Presiding Judge should rule adversely to Praise Media on this issue.

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<sup>4</sup> The record is devoid of any explanation as to why the letter was not filed with the Commission.

G. Testimonial Misrepresentation/Lack of Candor

14. It is well established that the truthfulness and candor of a witness are always in issue and that no separate issue need be articulated in this respect. RKO General, Inc., 78 FCC 2d 104 (1980). A misrepresentation is a false statement of fact made with the intent to conceal. Lack of candor involves concealment, evasions and other failures to be fully informative. Fox River, supra.

15. In her testimony, Janet Washington misrepresented facts and lacked candor with regard to a number of matters. Janet Washington, at first, claimed that the money necessary to return KARW(AM) to the air was in an escrow account. She later claimed that she was going to use the proceeds from a loan to put the station back on the air. The loan was in place, she testified, and available to her once the license was clear. Janet Washington, however, provided no documentary evidence that would establish either the existence of either an escrow account or a loan. The documentary evidence which was submitted shows that she has only applied for a loan.

16. Similarly disingenuous was her testimony that she had already put \$200,000 into the station. This money came, she claimed, from station operations, from profits realized by the operation of Club Infinity, from Eugene Washington, from her own savings, and from loans she received from friends and acquaintances. However, when ordered by the Presiding Judge to submit documentary evidence to support her claims of having received \$200,000

from these sources, Janet Washington ultimately maintained that the paperwork had either been: (1) stolen from the station; (2) confiscated by the FBI; or (3) was in the possession of an accountant and, therefore, unavailable.<sup>5</sup> Incredibly, she also claimed that individuals who had made large loans to her did not require her to sign any notes for the loans. Plainly, Janet Washington's false testimony about having invested a substantial sum of money in KARW(AM) was motivated by a desire to mislead the Commission into believing that Praise Media is seriously committed to the station.

17. The extent to which Janet Washington was willing to fabricate testimony to suit her immediate purposes is demonstrated by her testimony concerning a \$20,000 loan she claimed to have received from a wealthy acquaintance, Don Grant. Although she would later characterize the loan as a "godsend," she initially did not even recall having received any funds from Grant. Janet Washington testified that Grant gave her \$20,000 cash in a bundle. Indeed, she went so far as to represent that she counted the money and it was in 20 and 100 dollar bills. This testimony was false. Not only did Janet Washington lack documentation to support either her receipt of the loan from Grant or of her disbursement of the money to pay KARW(AM) bills, she ultimately reversed her testimony entirely about having received \$20,000 in a lump sum.

18. Janet Washington also dissembled regarding the provision of electricity to

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<sup>5</sup> By and large, the documentary information that Praise Media provided was entirely unrelated to anything that the Presiding Judge had ordered Janet Washington to produce.

KARW(AM). At first she claimed that, with the exception of three discrete periods (none of which lasted more than three days in length), KARW(AM) had received electricity continuously during the latter part of 1994 and January 1995. She testified that in early December she visited KARW(AM) and turned on the station's interior lights. In fact, her testimony was a total fabrication. Electricity to the station had been shut off by the electric company on November 18, 1994, and remained off at least through January 26, 1995. When Janet Washington was shown a letter from the electric company attesting to that fact, she branded the author of the letter a liar and claimed she had initiated a lawsuit against him. In fact, it was she who was not telling the truth. Janet Washington subsequently admitted that the station had not been receiving power when she went to the station in early December and that in fact she had no legal suit pending against the employee of the electric company who had written the letter. Her earlier testimony was clearly intended to mislead the Commission about whether KARW(AM)'s tower lights were operational during the station's silence.

19. Washington's testimony concerning funds obtained from her operation of Club Infinity also lacked candor. Although the night club only operated from November 1993 through July 1994, Washington claimed she made a \$50,000 profit during the nine month period. She was unable to substantiate this claim, however, because no income tax returns were ever filed for Club Infinity. Similarly, Janet Washington's claims about having reinvested profits from KARW(AM) back into the station also could not be substantiated because Praise Media has not filed income tax returns. Finally, Janet Washington's

testimony that she did not know the reason for her husband's incarceration was not credible. In her direct written testimony prepared months earlier, Janet Washington acknowledged that her husband was in prison on drug related charges. She later admitted as much to the Presiding Judge.

20. In sum, Janet Washington appears to be willing to lie whenever it suits her immediate purpose. She has misrepresented numerous facts to the Commission and demonstrated an appalling lack of candor throughout her testimony in this proceeding. It must be ultimately concluded that Janet Washington d/b/a Praise Media is not qualified to be a Commission licensee.

#### IV. Ultimate Conclusion

21. No appearance was made by Pine Tree in this proceeding. Rather, the only entity that entered an appearance was Praise Media, which claimed to be the successor in interest to Pine Tree. Pine Tree, the licensee of record for KARW(AM), failed to prosecute the captioned renewal application, and Praise Media is basically unqualified to be a Commission licensee. Praise Media assumed control of KARW(AM) without authorization, it ignored official Commission letters of inquiry, it never notified the Commission that the station had gone off the air, it failed to demonstrate that it can expeditiously return KARW(AM) to the air, and the company's sole principal misrepresented material facts and lacked candor in her testimony in this proceeding.

22. Based on the foregoing, it is ultimately concluded that Praise Media is not qualified to be a Commission licensee, and the renewal application of Pine Tree and/or its successor in interest, Praise Media, must be denied.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Complaints and Investigations Branch, Mass Media Bureau, certifies that she has, on this 5th day of June 1995, sent by regular United States mail, U.S. Government frank, copies of the foregoing "Mass Media Bureau's Proposed Findings of Fact and Conclusions of Law" to

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